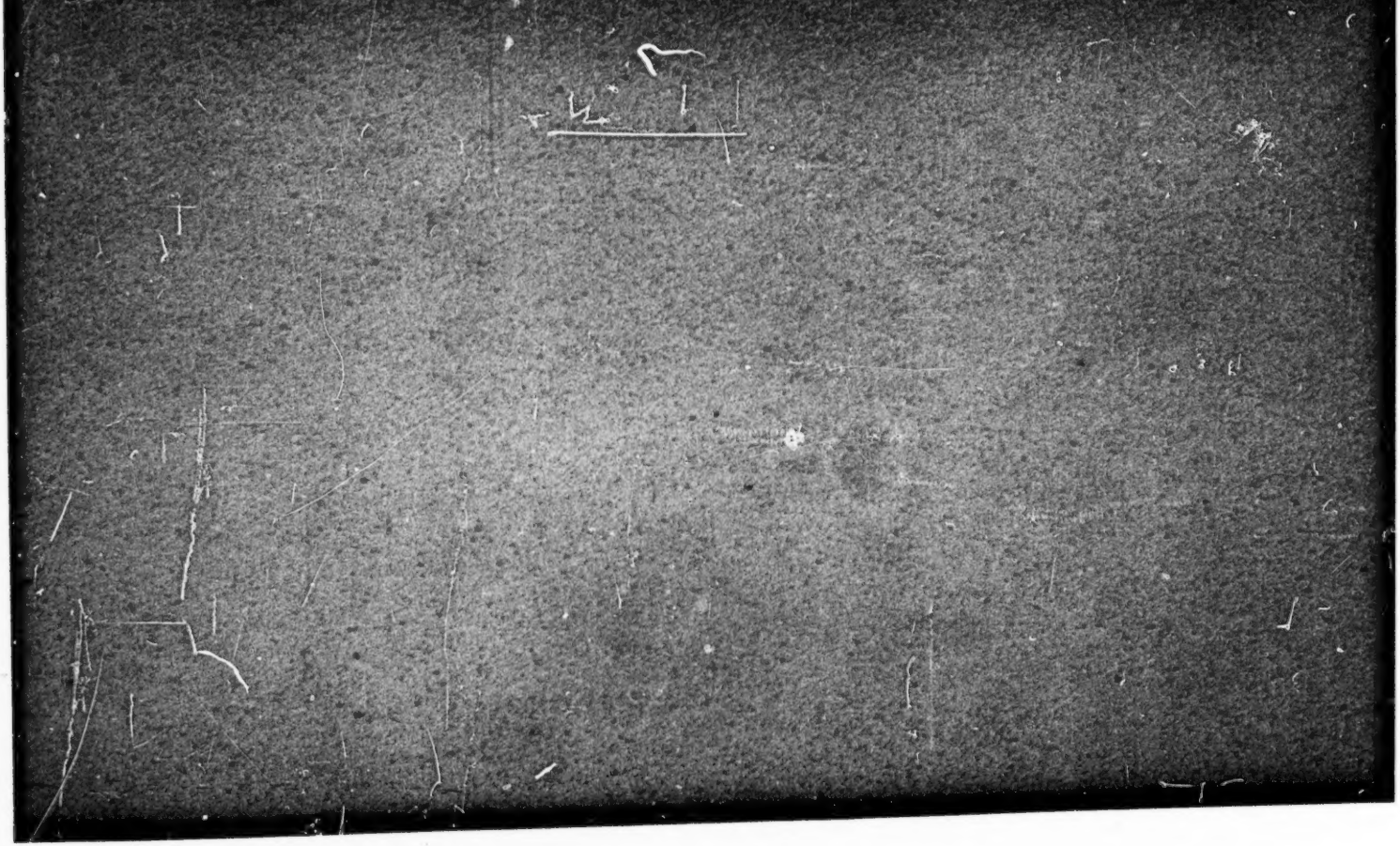

COURT, U. S.

MAR 20 1975

MICHAEL RODAK, JR., C

Supreme Court of the United States

October Term, 1974

No. 74-980

H. CLIFFORD LEE, *et al.*,
Petitioners,

vs.

HERSCHEL S. ARROWOOD, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO SUPREME COURT OF MINNESOTA

PETITIONERS' REPLY TO BRIEF OF EXECUTORS

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The brief filed by Respondent Executors underlines the need for review.

The Court will have observed Respondents *do not deny* that they:

1. *Stalled*, for their own purposes, closing the husband's estate.
2. *Refused to conduct* the affairs of the Foundation in the manner the widow and her husband had planned. Respondents repudiated not only the settlement but also the Resolution of the Foundation Board. The Board wished "to seek and be guided by the wisdom and leadership of Mrs. A. G. Bush," the widow, and:

"RESOLVED, that all requests for gifts or grants, as well as all other proposed gifts, grants, or op-

erations of the Foundation, be first submitted to Mrs. A. G. Bush, so that the Board may have the full benefit of her recommendations with respect to such grants, gifts, and operations, prior to the time that any action is taken by the Board with respect thereto."

This, as it now appears, was baiting the trap.

3. *Pursued the Probate Judge to the ski slopes of Vail, Colorado*, outside the geographic jurisdiction of the court, to obtain an ex parte order, without notice to the widow, or her counsel, or counsel of record for her husband's estate, (a) vacating the adjudication that the Foundation *is* the residuary legatee under the husband's will, and (b) vacating the order to distribute to the Foundation.

4. *Refused to appeal* that extrajudicial order.

5. *Activated a potential alternative* recipient of the husband's estate in competition with the Foundation.

6. *Asked the court to vacate* its order approving the settlement with the widow.

Thus, the trap was sprung.

The settlement contract was treated as good enough to induce the widow to withhold filing the renunciation she had signed; it was not good enough to honor.

Respondents excuse destruction of the widow's right on the ground it is a "novel" idea (p. 4) "that the loss of a veto power over a foundation's operations by a 90-year-old woman (after, according to the Petitioners, she has become incompetent) constitutes a material breach of that agreement."

This is to say an old woman's right is not "material."

For this callous attitude Respondents look to the Godfrey judgment for absolution.

The Godfrey judgment, consistently with the inexorable demand of due process, *cannot be made res judicata*:

1. *Of the widow's personal right.* Respondents assert the widow's lawyers (p. 6) "advised Judge Godfrey * * * that three of the lawyers representing Mrs. Bush in that action continued to have her authority to represent her." This is disproved by the "Addendum p. 1" Respondents cite as proof. It shows the lawyers were acting for Mrs. Bush *and* Mr. Lee *solely* in their representative capacity "as 'B' Directors," and *not* in any personal capacity.

2. *Of the renunciation issue.* The Godfrey action was brought to compel Respondents to carry out the settlement contract. Renunciation was not even mentioned. The judgment destroyed the settlement. The consequence is that the widow is entitled either (a) to be restored to her right to renounce—which she gave up in reliance on the settlement (which, as now appears, Respondents never intended to honor) or (b) to damages for the breach.

3. *Of the widow's competence.* She had been incapacitated for more than a year when the Godfrey judgment was entered.

The shocking fact is that on these issues at no time has there been evidence, or hearing, in any court, anywhere.

Until the right to a hearing is accorded a constitutional right is denied.

Respectfully submitted,

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